MT LEGISLATIVE HISTORY

Chapter 280 1981

Bill (H) 398 S _____ Original bill & hist. ✓C

H. Committee on Business & Industry		S. Committee on Business & Industry	
Hearing Date(s) FEB2	✓C	Hearing Date(s) MAR18	✓C
FEB16	✓C	MAR20	✓C
_____	___C	_____	___C
_____	___C	_____	___C
Date Out _____	___C	_____	___C

Did this bill originate in an interim committee? ___Yes ___No

Committee _____ Report _____

HOUSE BILL NO. 378

INTRODUCED BY HEMSTAD, SMITH

BY REQUEST OF THE STATE AUDITOR

IN THE HOUSE

January 20, 1981	Introduced and referred to Committee on Business and Industry.
February 17, 1981	Committee recommend bill do pass as amended. Report adopted.
February 18, 1981	Bill printed and placed on members' desks.
February 19, 1981	Second reading, do pass.
February 20, 1981	Considered correctly engrossed.
February 24, 1981	Third reading, passed. Ayes, 97; Noes, 1. Transmitted to Senate.

IN THE SENATE

March 2, 1981	Introduced and referred to Committee on Business and Industry.
March 21, 1981	Committee recommend bill be concurred in. Report adopted.
March 24, 1981	Motion pass consideration.
March 25, 1981	Second reading, concurred in.
March 27, 1981	Third reading, concurred in. Ayes, 50; Noes, 0.

IN THE HOUSE

March 28, 1981

Returned from Senate.
Concurred in. Sent to
enrolling.

Reported correctly enrolled.

HOUSE BILL NO. 378

INTRODUCED BY Hansen - Smith

BY REQUEST OF THE STATE AUDITOR

A BILL FOR AN ACT ENTITLED: "AN ACT TO GENERALLY REVISE AND CLARIFY PROHIBITED PRACTICES AND PENALTIES UNDER THE MONTANA SECURITIES ACT; AMENDING SECTIONS 30-10-301 AND 30-10-307, MCA."

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

Section 1. Section 30-10-301, MCA, is amended to read:

"30-10-301. ~~Prohibited~~ Fraudulent and other prohibited practices. (1) It is unlawful for any person, in connection with the offer, sale, or purchase of any security, directly or indirectly, in, into, or from this state, to:

(a) employ any device, scheme, or artifice to defraud;

(b) make any untrue statement of a material fact or omit to state a material fact necessary in order to make the statements made, in the light of the circumstances under which they are made, not misleading; or

(c) engage in any act, practice, or course of business which operates or would operate as a fraud or deceit upon any person.

(2) It is unlawful for any person who receives any consideration from another person primarily for advising the other person as to the value of securities or their purchase or sale, whether through the issuance of analysis or reports or otherwise, to:

(a) employ any device, scheme, or artifice to defraud the other person; or

(b) engage in any act, practice, or course of business which operates or would operate as a fraud or deceit upon the other person.

(3) It is unlawful for any investment adviser to enter into, extend, or renew any investment advisory contract unless it provides that:

(a) the investment adviser shall not be compensated on the basis of a share of capital gains upon or capital appreciation of the funds or any portion of the funds of the client;

(b) no assignment of the contract may be made by the investment adviser without the consent of the other party to the contract; and

(c) the investment adviser, if a partnership, shall notify the other party to the contract of any change in the membership of the partnership within a reasonable time after the change. Subsection (a) does not prohibit an investment advisory contract which provides for compensation based upon the total value of a fund averaged over a definite period or as of definite dates or taken as of a definite date.

"Assignment", as used in subsection (b), includes any direct or indirect transfer or hypothecation of an investment advisory contract by the assignor or of a controlling block of the assignor's outstanding voting securities by a security holder of the assignor; but if the investment adviser is a partnership, no assignment of an investment advisory contract is considered to result from the death or withdrawal of a minority of the members of the investment adviser having only a minority interest in the business of the investment adviser or from the admission to the investment adviser of one or more members who, after admission, will be only a minority of the members and will have only a minority interest in the business."

Section 2. Section 30-10-307, MCA, is amended to read:

"30-10-307. Civil liabilities. (1) Any person who offers or sells a security in violation of any provisions of 30-10-202 through 30-10-205 or offers or sells a security by means of fraud or misrepresentation is liable to the person buying the security from him, who may sue either at law or in equity to recover the consideration paid for the security, together with interest at 6% 10% per annum from the date of payment, costs, and reasonable attorneys' fees, less the amount of any income received on the security, upon the tender of the security, or for damages if he no longer owns the security. Damages are the amount that would be

recoverable upon a tender less:

(a) the value of the security when the buyer disposed of it; and

(b) interest at 6% 10% per annum from the date of disposition.

(2) Every person who directly or indirectly controls a seller liable under subsection (1), every partner, officer, or director (or person occupying a similar status or performing similar functions) or employee of such a seller, and every broker-dealer or salesman who participates or materially aids in the sale is liable jointly and severally with and to the same extent as the seller if the nonseller knew, or in the exercise of reasonable care could have known, of the existence of the facts by reason of which the liability is alleged to exist. There shall be contribution among the several persons so liable.

(3) Any tender specified in this section may be made at any time before entry of judgment. A cause of action under this statute survives the death of any person who might have been a plaintiff or a defendant. No person may sue under this section:

(a) if the buyer has received a written offer, at a time when he owned the security, to refund the consideration paid, together with interest at 6% 10% per annum from the date of payment, less the amount of any income received on

the security and he failed to accept the offer within 30 days of its receipt; or

(b) if the buyer has received a written offer at a time when he did not own the security in the amount that would be recoverable under subsection (1) upon a tender less:

(i) the value of the security when the buyer disposed of it; and

(ii) interest at 6% 10% per annum from the date of disposition.

(4) No person who has made or engaged in the performance of any contract in violation of any provision of parts 1 through 3 of this chapter or any rule or order hereunder or who has acquired any purported right under any such contract with knowledge of the facts by reason of which its making or performance was in violation may base any suit on the contract. Any condition, stipulation, or provision binding any person acquiring any security to waive compliance with any provision of parts 1 through 3 of this chapter or any rule or order hereunder is void as against public policy and in the public interest."

-End-

HB 378

Approved by Committee
on Business and Industry

HOUSE BILL NO. 378

INTRODUCED BY HEMSTAD, SMITH

BY REQUEST OF THE STATE AUDITOR

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SECOND READING

"Assignment", as used in subsection (5), includes any direct or indirect transfer or hypothecation of an investment advisory contract by the assignor or of a controlling block of the assignor's outstanding voting securities by a security holder of the assignor; but if the investment adviser is a partnership, no assignment of an investment advisory contract is considered to result from the death or withdrawal of a minority of the members of the investment adviser having only a minority interest in the business of the investment adviser or from the admission to the investment adviser of one or more members who, after admission, will be only a minority of the members and will have only a minority interest in the business."

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-End-

10.

BUSINESS AND INDUSTRY COMMITTEE

47th Legislature

Bill No.	Subject Matter	Date In	Sponsor	Hearing Date	Committee Action	Date Out
HB 349 (Cont.)	from misuse of products; and establishing a rebuttable presumption of freedom from defect.	1/19	Underdal Wallin Lund Kolstad (Others)	2/3	TABLED 2/16	
HB 350	To assure that once an applicant passes one portion of the real estate exam, he is not required to repeat that portion & eliminating any restrictions on how frequently an applicant can take the exam; amend 37-51-303, MCA.	1/19	Meyer Goodover McCallum (Others)	2/3	DO PASS AS AMENDED	2/3/81
HB 360	Amend 16-4-301 & 501 to allow a special permittee to sell wine as well as beer and to eliminate the two day minimum fee for certain permittees.	1/20	Metcalf Steve Brown Kessler	1/29	DO PASS AS AMENDED	2/5
HB 376	To generally revise & clarify Part 1 of the MT Securities Act relating to general application of the act; amend...; renumber...; & renumbering & amend 30-10-107.	1/20	Hemstad E. Smith	2/2	DO PASS AS AMENDED	2/18
HB 377	To generally revise & clarify part 2 of the MT Securities Act relating to registration of dealers & securities; amend...	1/20	Hemstad Smith	2/2	DO PASS AS AMENDED	2/18
HB 378	To generally revise & clarify prohibited practices & penalties under the MT Securities Act; amend...	1/20	Hemstad Smith	2/2	DO PASS AS AMENDED	2/16

#18

HOUSE BUSINESS AND INDUSTRY COMMITTEE

February 2, 1981

SUMMARIES FOR

HOUSE BILLS 376, 377, 378 and 380 - all introduced by Rep. Hemstad and Senator Smith as a package to revise the Securities Act of Montana.

HOUSE BILL 376 expands the definition of "security," changes some of the provisions of "exempt securities" and "exempt transactions", and allows the securities commissioner to deny or revoke any exemption.

HOUSE BILL 377 revises the regulations and procedures for registration of dealers and securities.

HOUSE BILL 378 revises the law on fraudulent and prohibited practices and changes from 6% to 10% the interest that may be recovered on fraudulent sales.

HOUSE BILL 380 revises and increases fees by generally doubling the amounts to be charged.

AMENDMENTS NEEDED: In each of these bills the title should be amended to change "Montana Securities Act" to "Securities Act of Montana."

HOUSE BILLS 376, 377 same amendment -

Title, line 6
Following: "OF THE"
Strike: "MONTANA SECURITIES ACT"
Insert: "SECURITIES ACT OF MONTANA"

HOUSE BILL 378 -

Title, lines 6 and 7
Following: "UNDER THE"
Strike: "MONTANA SECURITIES ACT"
Insert: "SECURITIES ACT OF MONTANA"

HOUSE BILL 380 -
Title, line 6
Following: "UNDER THE"
Strike: "MONTANA SECURITIES ACT"
Insert: "SECURITIES ACT OF MONTANA"

HOUSE BUSINESS AND INDUSTRY COMMITTEE

The House Business and Industry Committee met in Room 129, Capitol Building, February 2, 1981, to hear House Bills 376, 377, 378, 380. All members attended the hearing, although several had other meetings to attend and were in attendance when they could be.

HOUSE BILL 376 -

REP. ANDREA HEMSTAD, District #40, Cascade County, sponsored HB 376 at the request of the State Auditor; it expands the definition of "security" as it relates to the Montana Securities Act. It also changes some of the provisions of "exempt securities" and "exempt transactions", and allows the securities commissioner to deny or revoke any exemption.

Explanatory testimony is attached. This testimony was further explained by Deputy Securities Commissioner, Richard Tucker. See EXHIBIT A. The main purpose is to beef up the protection of investors. Certain areas of the law were allowing unscrupulous practitioners to trade securities in MT although not within the realm of investor security. Two stocks were traded that Montana was not even given a chance to review. HB 376 also has some housecleaning elements in it.

Discussion on "variable life" securities explained variable life may be allowed to be sold by NASA within a year or so. It is an investment in insurance whereby a certain amount of insurance is guaranteed, and the rest of the investment rides with the success of the investment the money is put into.

Securities that are registered with the New York Stock Exchange don't have to be individually registered in Montana. This allows them relief from the cost of registration so there will be more money for capitalization to be credited to stock holders. Senior risk securities are those offered by high standard rating companies who are listed on the New York Stock Exchange and another issue put out by them does not have to be registered because of their excellent rating. Should a company's rating diminish, they are put on a special board and watched very carefully. In an emergency, the stock exchange can go in and completely change the board and management. Such stock is no longer listed on the preferred stock exchange, but can be listed on another exchange with not quite such high standard requirements.

The commissioner would have authority to exempt certain offerings as discretionary offerings that in his opinion would not have to be registered. There are certain restrictions and requirements that have to be met, however. All the protection required for registration would have already been built into such offerings. Registration could cost from $5,000 to $50,000 depending on capitalization. The burden of proving an exemption is after the fact, however, under the exemption, it is before the fact when a discretionary exemption is allowed.

The state has been having trouble looking into the buying and selling of mortgages, and so registration of salesmen has provided a means of doing th

BRUCE LARSON, Auditor, said an application is not filed until all the information is received. Maybe a statement of intent is necessary. It is hard to decide what information we are going to require. Basically, we are doing here what other states in the area are doing.

Rep. Fabrega said on page 15, line 7 it is clarified for the registration statement that it is 10 'business' days. Page 3, line 8 shows the applicant shall obtain whatever information the commissioner requires.

Rep. Harper thought the actual filing date could be put off by requesting more information. In case of some requirement overlooked, the application could be considered as having never been filed. Would a statement of intent help?

Mr. Tucker said it would be virtually impossible for them to state all the additional information that would be required by rule because they all differ. The customary things the department is going to ask for are covered in the application for a security. Unaudited financial statements could be required to be audited, but this is not always required to register in order to cut down on expense. However, it may be that that would be requested a little later.

Rep. Fabrega asked Mr. Tucker to bring a proposed statement of intent for the potential authority in this bill to help enforce the code.

Rep. Hemstad did not choose to close.

HOUSE BILL 378 -

Rep. Andrea Hemstad, House District #40, Cascade County, co-sponsor, said HB 378 would generally revise and clarify prohibited practices and penalties under the Montana Securities Act. It would provide for increasing the interest award from 6% to 10% in order to keep the interest award current with present inflationary trends. See EXHIBIT C.

OPPONENTS: None

QUESTIONS -

Rep. Andreason - Why distinguish between fraudulent and other practices? Mr. Larson - Many county attorneys have problems alleging problems because it says prohibit practices and it gives no kind of crimes being committed. It will make it easier for county attorneys to allege a crime.

Rep. Harper - Why 10%? Mr. Larson - This is recovery. Under the old statutes it was 6%. The present law in the civil statute has been raised to 10% and our act is in conflict. Merely just changing to agree with other statutes, both for persons who have been wrongfully sold securities and interest on any judgment received. Rep. Harper - If the going rate is 18%, the violator is being given an 8% break. The minimum interest was changed from 6% in the case of a court judgment; 9% interest is now charged against a late payment. It is a question of the amount of rate. There is a difference between the usury limit and the other, and that is the interest you can make from your money. You do become an involuntary lender under this type of investment. The average is about 12%. You could bring action

under the broad fraud and get 10%. Mr. Tucker - It would all be fraudulent practices. An order just to cease and you did not cease, under that order you could come back and be fradulent. Mr. Larson - (b) and (c), page 1, lines 17 and 21 actually this bill will enlarge the crime description. The term 'fraud' itself is not all inclusive in that statute.

Rep. Fabrega - Page 1, line 12, 'and other prohibited' practices? Mr. Larson - Are also asking that they have the power to prosecute fraud that has merely started in this state. Page 1, line 13, you could have a person selling a stock from Montana, but not selling it in Montana. Various other states have court decisions where they feel that fraud in the offer or sale of security is in their jurisdiction. We would put this in the statutes. It is just important that we are able to stop a nefarious scheme that is set up in Montana, but they are selling to out-of-state - Montana and South Dakota could join in an action. Could start where the action started from. An oil mining attorney from Oklahoma moved to Texas and sold back to Oklahoma and Oklahoma couldn't touch them so when Texas Legislature met they put this in their law.

Rep. Wallin - Do you get a lot of reports on these fellows who are selling oil stocks from out-of-state. How detailed do you go into them? Mr. Tucker - They don't investigate all of them, but try to go after as many of them as they can or assign that investigation to another state. It is very possible to be able to get an onsite investigation from other states which is the same as they expect us to do. Rep. Wallin - Could you get information on a particular company? Mr. Tucker - Nobody should ever bypass the state agency because their resources are broader than any others around. They don't have the money to advertise and get an alert out to the people. They would like to have that information out.

Rep. Hemstad did not wish to close.

HOUSE BILL 380 -

Rep. Andrea Hemstad, House District #40, Cascade County, co-sponsor, said HB 380 would revise and raise fees under the Montana Securities Act. See EXHIBIT D.

OPPONENTS: None

QUESTIONS -

Rep. Harper - How many people are paying the maximum $1,000? Mr. Tucker - The majority pay the minimum payment. Over one-half come back and amend their offering at 1/10 of 1%. The majority of offerings range up to $500,000 in Montana, although whole offerings are much greater. Can't do this for $100 any more. The higher offering figure doesn't take much more work. Forty percent exceed the $1 million in Montana. Their office operates at 30% of fees assessed.

Rep. Hemstad closed.

HB 378

Exhibit A

LC 552

Section 1

30-10-301. The intent of the proposed addition of language in this section is to clarify the jurisdiction of the securities commissioner in regulating securities promoters operating from this state who sell only to customers outside the state. The purpose of the amendment is to prevent Montana from becoming a "safe harbor" for fraudulent promoters, and to allow this state to participate in joint enforcement efforts with other states against this type of fraudulent sales practice.

Section 2

30-10-307. The proposed changes in this section provide for increasing the interest award (from six to ten percent per annum) allowed in civil judgments. The change is requested to keep the interest award current with present inflationary trends.

HOUSE BUSINESS AND INDUSTRY COMMITTEE

The meeting was called to order by Vice Chairman William Ray Jensen, acting chairman, at 8:00 a.m., February 16, 1981, in room 129 of the Capitol Building, Helena. All members of the committee were present. Bills to be heard were HBs 597, 612, 625, 671, 713.

HOUSE BILL 597 -

REP. GENE ERNST, District #47, Judith Basin, sponsor, introduced HB 597 to require barber schools to employ as instructors only those persons licensed as instructors. He offered amendments to be added to the title to remove restrictions that barber schools and barber colleges may not charge customers.

DON ANDERSON, a barber for 23 years with three years on the Barber Board, started barber schools in Montana. He went through a long and expensive court proceedings with his first barber school. He thought he had the right to do all they were doing and were sued for $40,000 by an instructor because instructors were not mentioned in the barber law. He strongly supports HB 597 to put some rules and regulations to cover instructors into the law. An instructor in a barber school receives $1,000 or more. His qualification requirements are having had 10 years continuous service as a barber, a $2,000 bond, and his investment. He thinks the Board of Barbers should have the right to govern their trade and put the qualifications required on instructors to see that they qualify to be an instructor and to receive the $1,000. They have very good instructors in Montana. This is for the future. He strongly hopes HB 597 will have a Do Pass. See EXHIBITS A through L.

PAT GANDY, barber for 24 years, President of Montana Association of Barbers, supports HB 597. Have to put some teeth in the barber law.

JIM ALLEN, Secretary of the Montana Barber Board, supports HB 597. His reasons are concurrent with those already testifying. Being on the Barber Board he realizes the position they are in in not being able to control barber instructors in the schools. He disagrees with the qualifications of instructors now. He thinks the school owners have the qualifications, but the instructors don't. The longest time a barber instructor has is three years and some of these were hired directly out of school. He doesn't think that gives the students their money's worth.

HARRY M. OLSON, a retired barber, works for the State Association as state legislature lobbyist. He doesn't think this is putting an undue hardship on these people. In every state they have requirements for the qualifications of the instructors and owners. Would urgently urge passage of HB 597.

OPPONENTS:

GARY DUCHT, owner of a barber school in Great Falls, said they have all kinds of guidelines and restrictions as to whether students are given competent education or not. Many programs have qualification requirements. He

Rep. Jacobsen moved HOUSE BILL 105 DO PASS. Motion failed with a 2-15 vote. Two members were absent. So HB 105 leaves the committee as a DO NOT PASS.

HB 105 would put royalty owners under the same protection as the state is at the present time. The stub for state reports is much more complete than is the stub for royalty owners.

Rep. O'Hara moved HOUSE BILL 106 DO PASS. Rep. Harper made a substitute motion that HB 106 be amended. Amendment is shown on the standing committee report. Motion was adopted unanimously. Rep. O'Hara continued his motion that HOUSE BILL 106 DO PASS to HOUSE BILL 106 DO PASS AS AMENDED. Motion carried unanimously.

A motion was made to amend HB 188 on page 1, line 10, following "nuisance" to strike "to the state" and the motion was adopted. Rep. Ellerd moved that HOUSE BILL 188 DO PASS AS AMENDED. Motion carried with Rep. Pavlovich, Ellison, Andreason, Jensen, Manning voting no. Rep. Kessler was absent.

Rep. Jensen moved that HOUSE BILL 459 be tabled. Motion carried with Rep. Vincent voting No.

Rep. Fabrega moved HOUSE BILL 282 which he sponsored BE TABLED. Motion carried unanimously.

Rep. Kitselman moved HOUSE BILL 376 DO PASS. He further moved that proposed amendments be adopted, and they were unanimously accepted. Rep. Harper further moved that the title be amended, and this motion was adopted unanimously. Rep. Kitselman amended his original motion to HOUSE BILL 376 DO PASS AS AMENDED. It was unanimously adopted.

Rep. Kitselman moved HOUSE BILL 377 DO PASS. He further moved that the proposed amendments that had been agreed to be adopted. They were unanimously approved. Rep. Harper moved that the proper title adjustment be adopted which was unanimously accepted. Rep. Kitselman changed his motion to HOUSE BILL 377 DO PASS AS AMENDED. (The standing committee report shows the amendments for HB 376 and HB 377.)

Rep. Harper moved that HOUSE BILL 378 DO PASS. He further moved to change the title from Montana Securities Act to Securities Act of Montana. Motion was unanimously adopted. Motion was changed to HOUSE BILL 378 DO PASS AS AMENDED, which was unanimously adopted.

Rep. Harper moved HOUSE BILL 380 DO PASS. He further moved amendment to the title be adopted, which motion carried unanimously. He then moved HOUSE BILL 380 DO PASS AS AMENDED, and it was unanimously adopted.

HOUSE BILL 385 -

Rep. Manning moved HOUSE BILL 385 DO PASS. Rep. Harper moved section 1 be stricken in its entirety and the old language be reinserted, and this motion was unanimously adopted.

HOUSE BILL NO. 378

INTRODUCED BY HEMSTAD, SMITH

BY REQUEST OF THE STATE AUDITOR

A BILL FOR AN ACT ENTITLED: "AN ACT TO GENERALLY REVISE AND CLARIFY PROHIBITED PRACTICES AND PENALTIES UNDER THE MONTANA SECURITIES ACT OF MONTANA; AMENDING SECTIONS 30-10-301 AND 30-10-307, MCA."

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THIRD READING

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"30-10-307. Civil liabilities. (1) Any person who offers or sells a security in violation of any provisions of 30-10-202 through 30-10-205 or offers or sells a security by means of fraud or misrepresentation is liable to the person buying the security from him, who may sue either at law or in equity to recover the consideration paid for the security, together with interest at 6% 10% per annum from the date of payment, costs, and reasonable attorneys' fees, less the amount of any income received on the security, upon the tender of the security, or for damages if he no longer owns the security. Damages are the amount that would be

recoverable upon a tender less:

(a) the value of the security when the buyer disposed of it; and

(b) interest at 6% 10% per annum from the date of disposition.

(2) Every person who directly or indirectly controls a seller liable under subsection (1), every partner, officer, or director (or person occupying a similar status or performing similar functions) or employee of such a seller, and every broker-dealer or salesman who participates or materially aids in the sale is liable jointly and severally with and to the same extent as the seller if the nonseller knew, or in the exercise of reasonable care could have known, of the existence of the facts by reason of which the liability is alleged to exist. There shall be contribution among the several persons so liable.

(3) Any tender specified in this section may be made at any time before entry of judgment. A cause of action under this statute survives the death of any person who might have been a plaintiff or a defendant. No person may sue under this section:

(a) if the buyer has received a written offer, at a time when he owned the security, to refund the consideration paid, together with interest at 6% 10% per annum from the date of payment, less the amount of any income received on

the security and he failed to accept the offer within 30 days of its receipt; or

(b) if the buyer has received a written offer at a time when he did not own the security in the amount that would be recoverable under subsection (1) upon a tender less:

(i) the value of the security when the buyer disposed of it; and

(ii) interest at 6% 10% per annum from the date of disposition.

(4) No person who has made or engaged in the performance of any contract in violation of any provision of parts 1 through 3 of this chapter or any rule or order hereunder or who has acquired any purported right under any such contract with knowledge of the facts by reason of which its making or performance was in violation may base any suit on the contract. Any condition, stipulation, or provision binding any person acquiring any security to waive compliance with any provision of parts 1 through 3 of this chapter or any rule or order hereunder is void as against public policy and in the public interest."

-End-

Senate FORTY-SEVENTH LEGISLATIVE SESSION

COMMITTEE ON BUSINESS AND INDUSTRY

HOUSE BILL NO.	ENTERED COMM.	DATE CONSIDERED	OUT OF COMM.	DO PASS DATE	DO NOT PASS DATE	DO PASS AS AMEND. DATE	BE CONCURRED IN DATE	BE CONC. IN AS AMENDED DATE	BE NOT CONCURRED IN DATE
321	2/13	3/13	3/14				3/14		
346	2/10	3/11	3/11				3/11		
STATEMENT OF INTENT HB 346			3/11				3/11		
350	2/10	3/9	3/9					3/9	
360	2/13	3/11	3/11				3/11		
376	3/4	3/18	3/21 Tabled						
377	3/4	3/18	3/20				3/20		
378	3/2	3/18	3/20				3/20		
380	3/2	3/18	3/20				3/20		
385	3/5	3/20	3/21					3/21	
396	2/13	3/9	3/9				3/9		
409	3/2	3/12	3/14				3/14		
425	3/2	3/20	3/21				3/21		
430	3/2		3/4	MOVED TO LABOR COMMITTEE					
448	3/3	3/18	3/26					3/26	
450	2/19	3/9	3/4	MOVED TO AGRICULTURE COMMITTEE					

MINUTES OF THE MEETING
BUSINESS AND INDUSTRY COMMITTEE
MONTANA STATE SENATE

March 18, 1981

The regular meeting of the committee was called to order at 10 a.m. by Chairman Hazelbaker in room 404 of the Capitol Building on Wednesday, March 18. All members were present.

Scheduled for hearing were HOUSE BILLS 376, 377, 378, 380 and 448.

HOUSE BILL NO. 448: Representative Nordvedt, District 77. This bill deals with various changes in the regulation of domestic life insurance companies. There are only three in the state. Valuation of single premium life insurance policies for determining the financial condition of insurers will be at 5 1/2% interest. The bill also prescribes methods for valuation of debt securities, for correction of deficiencies in reserve deposits, for investing in the stock of subsidiaries, for investing in real estate mortgages and real estate. The bill also puts a ceiling of 6 1/2% on the interest to be used for computing single premium life insurance cash surrender values. There are between 4 and 500 out of state companies licensed to do business in the State of Montana. Basically, this bill is to remedy some of the problems. We hope the state can create some good regulations so they can compete with out of state companies. He went through the bill and explained it.

Page 5, line 12 deals with the good-will
page 7, line 8 changed from 4 1/2% to 5 1/2%, the interest rate used for evaluating - premium life insurance policy
page 10, line 22 This is the most important feature of the bill. Some of the assets would have to be deposited with the insurance office here in Helena. The market value would be down if they had to liquidate today.

This would allow those assets to be valued at something more in line with the actual value paid, amortized to their liquidation value. It puts an undue burden on the domestic companies who do not have to discount.

Page 12, line 20, a technical change in language.
Page 17, line 8, We are taking out a section. This section forbids insurance companies from participation in mortgages. By striking that section we would allow domestic companies to participate in mortgages.

The next section would allow them to participate in wrap-around mortgages.

Page 19, line 24, this would increase from 5% to 10% of assets that can be invested in real estate.

the registration of securities and it revises practices and procedures in examining persons involved in the offer or sale of securities. Applications would contain information required.

MR. TUCKER: Some of this is cleaning up the garbage. It just clears it up. Variable annuities are a creature of insurance companies. A lot of the language is antiquated.

HOUSE BILL NO. 378: There are two major changes in this bill. In section 1, the intent of the proposed additon of language in this section is to clarify the jurisdiction of the securities commissioner in regulating securities promoters operating from this state who sell only to customers outside the state. The purpose of the amendment is to prevent Montana from becoming a "safe harbor" for fraudalent promoters, and to allow this state to participate in joint enforcement efforts with other states against this type of fraudulent sales practice.

In section 2, the proposed changes provide for increasing the interest award, from six to ten percent per annum, allowed in civil judgments. The change is requested to keep the interest award current with present inflationary trends.

Actually, the bill revises and clarifies prohibited practices and penalties under the Securities Act. Prohibited practices would apply to securities transactions in the state, coming into the stat or from the state. The penalty on civil liability is increased to 10%.

HOUSE BILL NO. 380: This bill revises the fees charged under the Securities Act by generally doubling the existing fees. Additional fees and increases in existing fees are proposed for this section. Securities registration fees, on new issues, will be raised from $100 to $200 on the first $100,000 of the new issue, and will be raised from 1/20 of 1% to 1/10 of 1% on the excess of the new issu over $100,000. The maximum fee of $1,000 remains the same.

Renewal fees on securities registrations will be changed from 1/20 of 1% of the aggregate offering with a minimum fee of $100 and a maximum fee of $1,000 to 1/10 of 1% of the aggregate offering with a minimum fee of $200 and a maximum fee of $1,000. A late renewal fee of $50 is also requested to prevent delinquent renewals.

Registration fees for broker-dealers and investment advisors will remain the same, but an increase from $25 to $50 is proposed for salesmen registration fees. Fees for filing amendments to registrations are requested to defray record-keeping costs associated with it. Finally, the fee for exemption requests is raised from $25 to $50. The fee increases requested in this bill represent the first such increases since 1962, except for salesmens fees.

ROLL CALL

Wed.

BUSINESS and INDUSTRY COMMITTEE

47th LEGISLATIVE SESSION -- 1981

Date 3/18/81

NAME	PRESENT	ABSENT	EXCUSED
Goodover, Pat - Vice Chairman	✓		
Hazelbaker, Frank - Chairman	✓		
Blaylock, Chet	✓		
Boylan, Paul	✓		
Dover, Harold	✓		
Kolstad, Allen	✓		
Lee, Gary	✓		
Regan, Pat	✓		

Each day attach to minutes.

DATE March 18, 1981

COMMITTEE ON B & I HOUSE BILL NO. 378

Representative Hemstad

VISITOR'S REGISTER

NAME	REPRESENTING	Check One	
		Support	Oppose
[illegible]	State Auditor / Secretary of	✓	
"Dick" Tucker	" " " "	✓	

(Please leave prepared statement with Secretary)

NAME: Brian Sloan DATE: 2/15/21

ADDRESS: HCC

PHONE: 444-2010

REPRESENTING WHOM? State Auditor

APPEARING ON WHICH PROPOSAL: HB 376 377 378 381

DO YOU: SUPPORT? X AMEND? _____ OPPOSE? _____

COMMENTS: _____

PLEASE LEAVE ANY PREPARED STATEMENTS WITH THE COMMITTEE SECRETARY.

NAME: B.G "Rick" Tucker DATE: 3/18/81

ADDRESS: C/o State Auditor

PHONE: 449-2040

REPRESENTING WHOM? State Auditor / Securities

APPEARING ON WHICH PROPOSAL: HB 376, 377, 378, 380

DO YOU: SUPPORT? ✓ AMEND? _____ OPPOSE? _____

COMMENTS: _____

PLEASE LEAVE ANY PREPARED STATEMENTS WITH THE COMMITTEE SECRETARY.

MINUTES OF THE MEETING
BUSINESS AND INDUSTRY COMMITTEE
MONTANA STATE SENATE

March 20, 1981

The regular meeting of the Business and Industry Committee was called to order by Chairman Hazelbaker at 10 a.m. in room 404 of the Capitol Building on Friday, March 20.

ROLL CALL: All members present with the exception of Senator Dover, excused.

HOUSE BILL NO. 385: Representative Pistoria, District 39. This bill increases the annual report fee for each individual or family unit covered by a health service corporation from 20 cents to 50 cents, subject to a minimum of $100. The corporation is required to submit contracts and forms to the insurance commissioner for approval at least 30 days prior to use. The commissioner is required to examine each health service corporation at least once every four years. I would like to thank Jay Fabrega for a job well done. The House B & I Committee made changes that are more effective and strengthen the bill.

The bill accomplishes practically everything I asked for, and what the senior citizens have been wanting for some time. The control of the non-profit health insurance corporations such as Blue Shield and Blue Cross, the Blues, as they are called by the State Auditor, Sonny Omholt, who is also the Insurance Commissioner. It is the first time the blues will be controlled by the Insurance Commissioner as the private health insurance corporations are.

I would like to give a few reasons why I introduced this bill. The strong feelings and public demand due to many complaints, which I received from people through letters and telephone calls, who have had to have medical care.

1. The long delays in payment of claims
2. In many cases, the citizens did not receive or were denied the just amount coming to them for their illness.
3. In some cases the amount coming to them was less, and they could not afford to hire an attorney and court costs to defend themselves. Therefore, they accepted the amount of the claim.

I have a couple of letters that I received that I would like you to read, which verifies what I have stated. I understand that Blue Shield and Blue Cross will not oppose this as written up and will adhere to it. The bill makes one change and has two new additions. It also has a statement of intent, which Mr. Fabrega will explain, because it came from his committee.

SENATOR BOYLAN: Maybe this study would show us if we should or should not do that. I think that a lot of capital is going out of the State of Montana.

MR. YOUNG: We try to buy in Montana. We actually buy 9 out of 10 mortgages offered to us. However, small business is not best served in Montana. We would have some recommendations to help start small businesses. It is the small emerging business that has a gap, because of the risk for banks.

REPRESENTATIVE THOFT: The very fact that there is a question needs to be resolved. I would hope that you would give your approval for this study. I have no argument with the Board of Investments but I think we need this money in Montana.

With no further discussion the hearing closed on House Joint Resolution No. 29.

EXECUTIVE SESSION: 11:30 a.m.

There was general discussion about the makeup of a committee to be appointed to do a study of the investments as asked for in the House Joint Resolution No. 29.

CHAIRMAN HAZELBAKER commented that because the bills were related House Bills 376, 377, 378 and 380 would be discussed at the same time, but they would take 376 first and Greg would explain each one.

GREG PETESCH: Staff Attorney. He explained and expanded on the definition of a security, and explained risk capital and explained that the bill would clarify variable policies,

SENATOR REGAN: Would you have to have a brokers license to sell.

MR. PETESCH: No, and he went on to explain that the definition of risk capital grew out of a California court case.

ACTION ON HOUSE BILL NO. 376:

SENATOR GOODOVER moved be concurred in. The motion carried with the vote unanimous. Senator Smith will carry since he is a sponsor.

HOUSE BILL NO. 377:

MR. PETESCH explained that the bill conforms to the Uniform Securitie Act. It would allow ten business days for the review of an applicatio

SENATOR REGAN: Would the kinds of questions the Commissioner could ask be on some kind of a form.

SENATOR LEE commented that this concerned him also. He gave examples

of kinds of abuses that could come about. Then followed general discussion about what kinds of information might be required. A lot of concern was expressed about this.

MR. PETESCH explained that this would be for registering of securities for offering. You could not require information from a purchaser. He went on to clarify other items.

ACTION ON HOUSE BILL NO. 377:

SENATOR BLAYLOCK moved that the bill be concurred in. The motion carried with the vote unanimous. Senator Smith will carry because he is a sponsor.

HOUSE BILL NO. 378:

MR. PETESCH explained that the bill clarifies fraudulent securities and gives a definition.

SENATOR BLAYLOCK moved that the bill be concurred in. The motion carried with the vote unanimous. Senator Smith will carry because he is a sponsor.

HOUSE BILL NO. 380:

SENATOR KOLSTAD moved be concurred in. The motion carried with the vote unanimous. Senator Smith will carry because he is a sponsor.

HOUSE BILL NO. 448:

This bill deals with various changes in the regulation of domestic life insurance companies.

SENATOR REGAN moved be not concurred in. Discussion followed about the problems with the bill. Senator Regan said she felt what was being done was eroding the margin of safety of the money of the policy holders. On page 19 there are a number of things that an insurance company may not invest in. I am concerned about page 19, the mining investments. It seems to me it allows them to do it.

There was general discussion about the pros and cons of the bill.

SENATOR REGAN commented that they do not allow good-will. She went through the bill and pointed out her concerns.

ROLL CALL

BUSINESS and INDUSTRY COMMITTEE

47th LEGISLATIVE SESSION -- 1981 Date 3/20/81

NAME	PRESENT	ABSENT	EXCUSED
Goodover, Pat - Vice Chairman	✓		
Hazelbaker, Frank - Chairman	✓		
Blaylock, Chet	✓		
Boylan, Paul	✓		
Dover, Harold			
Kolstad, Allen	✓		
Lee, Gary	✓		
Regan, Pat	✓		

Each day attach to minutes.

HOUSE BILL NO. 378

INTRODUCED BY HEMSTAD, SMITH

BY REQUEST OF THE STATE AUDITOR

A BILL FOR AN ACT ENTITLED: "AN ACT TO GENERALLY REVISE AND CLARIFY PROHIBITED PRACTICES AND PENALTIES UNDER THE MONTANA SECURITIES ACT OF MONTANA; AMENDING SECTIONS 30-10-301 AND 30-10-307, MCA."

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

Section 1. Section 30-10-301, MCA, is amended to read:

"30-10-301. ~~Prohibited~~ Fraudulent and other prohibited practices. (1) It is unlawful for any person, in connection with the offer, sale, or purchase of any security, directly or indirectly, in, into, or from this state, to:

(a) employ any device, scheme, or artifice to defraud;

(b) make any untrue statement of a material fact or omit to state a material fact necessary in order to make the statements made, in the light of the circumstances under which they are made, not misleading; or

(c) engage in any act, practice, or course of business which operates or would operate as a fraud or deceit upon any person.

(2) It is unlawful for any person who receives any consideration from another person primarily for advising the other person as to the value of securities or their purchase or sale, whether through the issuance of analysis or reports or otherwise, to:

(a) employ any device, scheme, or artifice to defraud the other person; or

(b) engage in any act, practice, or course of business which operates or would operate as a fraud or deceit upon the other person.

(3) It is unlawful for any investment adviser to enter into, extend, or renew any investment advisory contract unless it provides that:

(a) the investment adviser shall not be compensated on the basis of a share of capital gains upon or capital appreciation of the funds or any portion of the funds of the client;

(b) no assignment of the contract may be made by the investment adviser without the consent of the other party to the contract; and

(c) the investment adviser, if a partnership, shall notify the other party to the contract of any change in the membership of the partnership within a reasonable time after the change. Subsection (a) does not prohibit an investment advisory contract which provides for compensation based upon the total value of a fund averaged over a definite period or as of definite dates or taken as of a definite date.

REFERENCE BILL

"Assignment", as used in subsection (b), includes any direct or indirect transfer or hypothecation of an investment advisory contract by the assignor or of a controlling block of the assignor's outstanding voting securities by a security holder of the assignor; but if the investment adviser is a partnership, no assignment of an investment advisory contract is considered to result from the death or withdrawal of a minority of the members of the investment adviser having only a minority interest in the business of the investment adviser or from the admission to the investment adviser of one or more members who, after admission, will be only a minority of the members and will have only a minority interest in the business."

Section 2. Section 30-10-307, MCA, is amended to read:

"30-10-307. Civil liabilities. (1) Any person who offers or sells a security in violation of any provisions of 30-10-202 through 30-10-205 or offers or sells a security by means of fraud or misrepresentation is liable to the person buying the security from him, who may sue either at law or in equity to recover the consideration paid for the security, together with interest at 6% 10% per annum from the date of payment, costs, and reasonable attorneys' fees, less the amount of any income received on the security, upon the tender of the security, or for damages if he no longer owns the security. Damages are the amount that would be

HB 0378/02

recoverable upon a tender less:

(a) the value of the security when the buyer disposed of it; and

(b) interest at 6% 10% per annum from the date of disposition.

(2) Every person who directly or indirectly controls a seller liable under subsection (1), every partner, officer, or director (or person occupying a similar status or performing similar functions) or employee of such a seller, and every broker-dealer or salesman who participates or materially aids in the sale is liable jointly and severally with and to the same extent as the seller if the nonseller knew, or in the exercise of reasonable care could have known, of the existence of the facts by reason of which the liability is alleged to exist. There shall be contribution among the several persons so liable.

(3) Any tender specified in this section may be made at any time before entry of judgment. A cause of action under this statute survives the death of any person who might have been a plaintiff or a defendant. No person may sue under this section:

(a) if the buyer has received a written offer, at a time when he owned the security, to refund the consideration paid, together with interest at 6% 10% per annum from the date of payment, less the amount of any income received on

the security and he failed to accept the offer within 30 days of its receipt; or

(b) if the buyer has received a written offer at a time when he did not own the security in the amount that would be recoverable under subsection (1) upon a tender less:

(i) the value of the security when the buyer disposed of it; and

(ii) interest at 6% 10% per annum from the date of disposition.

(4) No person who has made or engaged in the performance of any contract in violation of any provision of parts 1 through 3 of this chapter or any rule or order hereunder or who has acquired any purported right under any such contract with knowledge of the facts by reason of which its making or performance was in violation may base any suit on the contract. Any condition, stipulation, or provision binding any person acquiring any security to waive compliance with any provision of parts 1 through 3 of this chapter or any rule or order hereunder is void as against public policy and in the public interest."

-End-